STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.		WORKERS' COMPENSATION COURT APPELLATE DIVISION
ROBERT H. HAZARD, JR.	)	
	)	
VS.	)	W.C.C. 00-02244
	)	
CITY OF PAWTUCKET	)	

DECISION OF THE APPELLATE DIVISION

BERTNESS, J. This matter came to be heard before the Appellate Division upon the petitioner/employee's appeal from the decision and decree of the trial court entered on December 17, 2001. This matter was heard as an Employee's Petition to Review alleging that the employer refused to pay the medical bills of Dr. Beverly C. Walters in the amount of Eleven Thousand Four Hundred Ninety-Six Dollars ($11,496.00), and Miriam Hospital in the amount of Five Thousand Two Hundred Sixty-Four Dollars and Sixty-six Cents ($5,264.66). The employee requests that the employer pay specific compensation for loss of use and disfigurement caused by the surgery he underwent on September 1, 1998. The petition was later amended to allege that the employer refused permission for surgery, specifically a lumbar microdiscectomy.

The employee, Robert H. Hazard, Jr., was employed as a driver and laborer on a City of Pawtucket sanitation truck during July 1997. His job required him to

continuously enter and exit the sanitation truck and assist the other member of the crew picking up refuse left on the curbside in the City of Pawtucket. On July 28, 1997, Mr. Hazard attempted to lift a refuse barrel which appeared to be full of leaves; however, the bottom of the barrel was full of cinderblocks. He did not immediately feel any pain and completed his shift. The next morning he awoke with significant pain. He then sought treatment from Dr. Richard G. Bertini on August 7, 1997. Shortly thereafter, Mr. Hazard filed an Original Petition seeking workers' compensation benefits for his injury on July 28, 1997. He received workers' compensation benefits and did not immediately return to work. While en route to physical therapy for his back injury, Mr. Hazard was involved in a motor vehicle accident on February 24, 1998.

The employee returned to work on April 6, 1998 on a light duty basis but left after less than an hour, complaining of severe pain. Mr. Hazard then sought additional treatment with Dr. Howard F. Hirsch. Dr. Hirsch recommended decompressive surgery and referred Mr. Hazard to Dr. Beverly Walters, a surgeon, for a consultation. The surgery was performed by Dr. Walters on September 1, 1998 at Miriam Hospital.

The pertinent travel of the prior case, W.C.C. No. 98-02308, is necessary to review. That matter came before the trial judge on an Employer's Petition to Review alleging that the employee's incapacity for work had ended. The document under review at trial was a Memorandum of Agreement dated February 1, 1998. The Memorandum of Agreement recited a date of injury of July 28,

1997, describing the injury as a "back strain." The Memorandum of Agreement provided benefits for partial incapacity commencing August 1, 1998 and continuing.

The trial court denied and dismissed the Employer's Petition to Review finding that the employee remained partially disabled for work. The employer appealed the trial judge's decision to the Appellate Division.

The Appellate Division reversed the trial court and found that the employee was no longer disabled as a result of his July 28, 1997 work-related injury. The appellate panel further found that the September 1998 lumbar microdiscectomy surgery was not necessary to cure, rehabilitate, or relieve the employee from the effects of his July 1997 work-related injury. The Rhode Island Supreme Court denied a petition for a *writ of certiorari* by an unpublished order issued on October 18, 2001. Robert H. Hazard, Jr. v. City of Pawtucket (Mem.), No. 2001-67-M.P. (R.I., Oct. 18, 2001).

Thereafter, the employee filed the instant petition alleging the employer's refusal to pay the bills of Dr. Walters and Miriam Hospital. The instant petition also alleges that the employer refused permission for lumbar microdiscectomy surgery and requests the payment of specific compensation as a result of the surgery. The trial court denied the petition based on the finding made by the Appellate Division in the prior petition, W.C.C. No. 98-02308. From that decision and decree, the instant appeal followed.

The employee, Robert H. Hazard, Jr., filed the following as his Reasons of Appeal:

> "1. The Decree of the Trial Judge is against the law and evidence in that the Trial Judge erred in denying the within Employee's Petition to Review, WCC # 00-02244, based on the principles of Res Judicata, i.e. the Trial Judge based his denial of the matter at bar WCC # 00-02244 on the principles of Res Judicata and a certain prior case, specifically WCC # 98-02308 [prior case].
>
> "2. The Decree of the Trial Judge is against the law and the evidence in that by the Trial Judge denying the within Employee's Petition to Review, WCC # 00-02244, based on the principles of Res Judicata the Trial Judge has denied the Employee his right to due process in that the Employee was never afforded the opportunity to present any evidence in the within case [00-02244] or the prior case [98-02308] relative to the issue concerning the necessity of surgery."

Pursuant to R.I.G.L. § 28-35-28(b), a trial judge's findings on factual matters are final unless found to be clearly erroneous. Diocese of Providence v. Vaz, 679 A.2d 879 (R.I. 1996). The Appellate Division is entitled to conduct a *de novo* review only when a finding is made that the trial judge was clearly wrong. Id. (citing R.I.G.L. § 28-35-28(b); Grimes Box Co. v Miguel, 509 A.2d 1002 (R.I. 1986)). Such review, however, is limited to the record made before the trial judge. Vaz, supra (citing Whittaker v. Health-Tex, Inc., 440 A.2d 122 (R.I. 1982)).

Cognizant of this legal duty imposed upon us, we have carefully reviewed the entire record of this proceeding. For the reasons set forth, we find no merit in the employee's appeal and, therefore, we affirm the trial judge's decision and decree.

Rhode Island has long accepted and applied the doctrine of *res judicata* in respect to decisions of the courts of this state and the courts of other states. See,

e.g., Randall v. Carpenter, 57 A. 865 (1904). Generally, "the doctrine of *res judicata* renders a prior judgment by a court of competent jurisdiction in a civil action between the same parties conclusive as to any issues actually litigated in the prior action, or that could have been presented and litigated therein." DiBattista v. State, Dept. of Children, Youth & Families, 717 A.2d 640, 642 (R.I. 1998).

The doctrine of *res judicata* "serves as an 'absolute bar to a second cause of action where there exists identity of parties, identity of issues, and finality of judgment in an earlier action.' " Gaudreau v. Blasbalg, 618 A.2d 1272, 1275 (R.I. 1993) (quoting In Re Sherman, 565 A.2d 870, 872 (R.I. 1989) and Beirne v. Barone, 529 A.2d 154, 157 (R.I. 1987)). "The policy underlying *res judicata* is to economize the court system's time and lessen its financial burden." ElGabri v. Lekas, 681 A.2d 271, 275 (R.I. 1996). "'This doctrine ensures that judicial resources are not wasted on multiple and possibly inconsistent resolutions of the same lawsuit.' " Id. at 275 (quoting Gaudreau, 618 A.2d at 1275).

The Appellate Division recognizes that the doctrine of *res judicata* has limited application to petitions to review decrees or agreements in workers' compensation cases. Lavoie v. Victor Elec., 732 A.2d 52, 54 (R.I. 1999); DiVona v. Haverhill Shoe Novelty Co., 85 R.I. 122, 125, 127 A.2d 503, 505 (1956).

> "It is our opinion that in enacting sec. 12 [of P.L. 1954, ch. 3297, art. III] the legislature intended to give both an employer and an employee a comprehensive right to litigate from time to time, on a petition to review or one based on a new injury, questions involving an increase or a decrease in the incapacity of the employee after an approved agreement or a decree has been entered. In our judgment

> it would do violence to the legislative intent to apply the doctrine of res adjudicata so as to preclude an employer or an employee from having an actual adjudication of the issue of alleged increased or decreased incapacity which may have inhered in the physical injury described in the agreement, although it had not become incapacitating at the time of the prior proceeding and decision.
>
> "Consistent with a liberal construction of the provisions of the act we hold that the doctrine of res adjudicata will be applied in these cases only with respect to such issues as were actually raised and decided in the prior action. The question then becomes one of fact: Was the questioned issue of fact raised and decided in the prior case? If it was, it is barred by the doctrine. If it was not so raised and decided, it may properly be heard in the subsequent proceeding in accordance with the act." Id. at 126, 127 A.2d at 505.

In the instant petition, there is an identity of the issues and parties as well as a finality of judgment. Mr. Hazard and the City of Pawtucket are the same parties in each petition. Each deals with the same issue of the relationship between Mr. Hazard's September 1, 1998 surgery and his work-related injury. The court found no causal relationship between Mr. Hazard's work injury and his surgery. Furthermore, there is a finality of judgment in the prior action. W.C.C. No. 98-02308 was decided upon the merits by the Appellate Division on January 26, 2001. The Supreme Court denied the employee's petition for a *writ of certiorari*. Each party had the opportunity to present evidence, perform discovery, present witnesses, and/or cross examine any witness or group of witnesses as they deemed proper. *Res judicata* is applicable and was properly applied by the trial judge in the instant petition. Therefore, we cannot hold that the trial judge was clearly erroneous in finding that the doctrine of *res judicata* bars the Employee's Petition to Review.

For the aforesaid reasons, the Employee's Reasons of Appeal are hereby denied and dismissed and we, therefore, affirm the trial judge's decision and decree.

In accordance with Sec. 2.20 of the Rules of Practice of the Workers' Compensation Court, a final decree, a copy of which is enclosed, shall be entered on

Rotondi and Salem, JJ. concur.

ENTER:

_____
Rotondi, J.

_____
Bertness, J.

_____
Salem, J.

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FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard by the Appellate Division upon the appeal of the petitioner/employee and upon consideration thereof, the appeal is denied and dismissed, and it is:

ORDERED, ADJUDGED, AND DECREED:

The findings of fact and the orders contained in a decree of this Court entered on December 17, 2001 be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

BY ORDER:

_____

ENTER:

_____
Rotondi, J.

_____
Bertness, J.

_____
Salem, J.

I hereby certify that copies were mailed to Robert Cosentino, Esq., and Robert Jeffrey, Esq. on _____